

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION**

VITO A. PESCE, on behalf of)	
himself and all others similarly)	
situated)	11-cv-1379
Plaintiff)	
v.)	Judge Robert W. Gettleman
FIRST CREDIT SERVICES,)	
INC. dba ACCOUNTS)	
RECEIVABLE)	Magistrate Judge Morton Denlow

**COMBINED FRCP 12(b)(1) and 12(c) MOTION TO DISMISS OR STAY BASED UPON
THE ABSENCE OF ARTICLE III STANDING**

NOW COMES Defendant, FIRST CREDIT SERVICES, INC. dba ACCOUNTS RECEIVABLE TECHNOLOGIES (“FCS”), by and through its undersigned attorneys, and pursuant to FRCP 12(b)(1) and 12(c), moves to dismiss Plaintiff’s Complaint based upon the absence of Article III standing, and in support states:

1. Plaintiff alleges that Defendant violated The Telephone Consumer Protection Act, 47 U.S.C. § 227, (“TCPA”) by making an auto-dialed call to his cell phone without Plaintiff’s consent. Plaintiff does claim that he suffered any actual damages as a result of Defendant’s conduct. Rather, he seeks statutory damages of \$500 per call and possible treble damages.

2. As set forth in the accompanying Memorandum of Law, this case should be dismissed pursuant to FRCP 12(b)(1) because Plaintiff lacks a actual injury as required by Article III of the Constitution. Alternatively, Defendant is entitled to judgment as a matter of law pursuant to FRCP 12(c) because the Amended Complaint fails to identify any actual damages. Alternatively, this Case should be stayed until such time as the Supreme Court decides a pending appeal involving whether the absence of an actual injury in RESPA case violates Article III.

WHEREFORE, Defendant respectfully that this Honorable Court dismiss Plaintiff's Complaint with prejudice. Alternatively, Defendant respectfully that this Honorable Court stay this case.

By: /s/*David M. Schultz*

David M. Schultz

James C. Vlahakis

One of the Attorneys for Defendant

FIRST CREDIT SERVICES, INC. dba

ACCOUNTS RECEIVABLE TECHNOLOGIES

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CERTIFICATE OF SERVICE

I hereby certify that on Sept. 15, 2011, I electronically filed the above document with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to all counsel of record.

By: s/ James C. Vlahakis
One of the Attorneys for Defendant